HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1498 of 2001
(Criminal Appeal No. 984/1995 Old No.)

1. Madan Singh S/o Laxman Singh
2. Gopal Singh S/o Madan Singh
   R/o Soopi Tok, Patti Sat Bunga
   District Nainital ……Appellants

Vs.

State of U.P. …..Respondent.

Sri Sidharth Sah learned counsel for the appellant.
Sri G. S. Sandhu learned A.G.A. for the State.

Hon'ble Irshad Hussain, J.

This is a criminal appeal under Section 374 read with 389 of the Code of Criminal Procedure (for short 'Code') against the judgment and order dated 12.6.1995 passed by then IVth Addl. Sessions Judge, Nainital in S.T. No. 263/1993 convicting the appellants under section 308/34 I.P.C. and sentencing them to undergo RI for three months and to pay fine of Rs. 2000/- each.

The appellant no.1-Madan Singh is since deceased, the appeal stand abated against him under section 394 of the Code.

Learned counsel for the appellant no. 2 did not dispute the finding of guilt as recorded by the leaned Judge but submitted that the sentence awarded against the said appellant was on the higher side and in fact considering is age and antecedents he should have been given benefit of section 6 of the probation of Offenders Act, 1958. The appellant was found to be about 19-20 years of age at the time of the occurrence. Now, no useful purpose will be served if the appellant is to be released on probation because he had been convicted and sentenced in the year 1995. When the appeal was admitted he was released on bail an and till date there is nothing to indicate that the liberty was abused in any manner by the appellant. The occurrence took place in the year 1992 and considering that the incident took place on a trifling matter among the neighbors, the

sentence of imprisonment may very well be reduced to the sentence already undergone by the appellant together with fine imposed against him per judgement and order dated 12.6.1995.

For the reasons aforesaid, the appeal is partly allowed. Conviction of the appellant-Gopal Singh under section 308/34 IPC is affirmed. The sentence of imprisonment is however modified to the sentence already undergone together with fine of Rs. 2000/- (Rupees two thousand only). As directed the sum of Rs. 1000/- (Rupees one thousand only) is to be paid to the injured Deevan Singh as compensation. The appellant shall deposit the fine within a period of one month from the date of this order.

Let the record be sent hack to CJM concerned for compliance and report to be submitted within two months.

Dated 25.6.2004 **(Irshad Hussain, J.)**

Rawat